Neutral Citation Number: [2022] EWHC 1535 (QB).

Case No: QB-2021-003422

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/06/2022 and

Before :

MASTER DAVID COOK

- -

Between :

NATHALIE RUTA	**Claimant**
- and -	
DEPARTMENT FOR WORK AND PENSIONS	**Defendant**

- -
- -

Nathalie Ruta (in person) for the **Claimant**
Jonathan Scherbel-Ball (instructed by **Government Legal Department**) for the **Defendant**

Hearing date: 13 June 2022

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MASTER DAVID COOK

MASTER COOK:

1. This is the hearing of the Defendant's application to strike out the claim and/or have summary judgment entered on its behalf.

2. The claim is a claim for libel and malicious falsehood brought by the Claimant against the Defendant. It arises from an incident which occurred on 24 June 2020 when the Claimant approached and spoke to a member of the Defendant's JobCentre Plus staff in the Leamington branch of Marks and Spencer.

3. I make clear at this point it is not part of my function in determining this application to come to any conclusion as to what was said and by who on 24 June 2020. It is sufficient to record that there is clearly an issue between the Claimant and the staff member involved as to what occurred and what was said, the extent of that issue will be seen from the chronology of events set out at paragraphs 6 to 23 below.

4. The Claimant acts in person and I have taken full account of the fact and that she cannot afford and does not have access to legal advice. However, the Civil Procedure Rules [CPR] apply to all litigants whether represented or unrepresented. As Lord Sumption pointed out in *Barton v Wright Hassall LLP* [2018] UKSC a lack of representation will often justify making allowances in making case management decisions and in conducting hearings but will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. In that regard he said;

> "Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take."

5. The application was supported by the witness statement of Mr David Kirkham dated 25 October 2021. I was also provided with a bundle of documents containing the Claimant's response to the Defendant's summary judgment application, the relevant correspondence between the parties and a draft amended particulars of claim.

6. The chronology of events is not seriously in dispute. Following the incident on 24 June 2020 the Defendant's staff member completed an online incident report form in accordance with the Defendant's "Unacceptable Customer Behaviour Guidance". The report was sent to the Defendant's Unacceptable Behaviour [UCB] Team. It is the evidence of Mr Kirkham that that this report was made by the staff member on 25 June 2020 at 16.40.

7. On 2 July 2020 the nominated manager of the UCB Team wrote to the Claimant in the following terms;

> "Dear Madam
>
> We are writing to you about the incident which took place on 24 June 2020, when you approached a member of staff in a retail outlet. You were shouting, threatening and intimidating the DWP employee. We must point out that approaching any

> member of staff outside the jobcentre, could be deemed as harassment and may be reported to the Police.
>
> We must inform you that such behaviour towards Department for Work and Pensions staff, their partners or whilst on our premises or via the telephone is unacceptable. Should this type of incident happen again, our records will be noted that you pose a potential threat to staff, and other organisations that you have contact with, for example the Local Authority, may be notified of the fact that you have been involved in an incident(s) and your records have been marked. The marking of your records will be solely for the safety of staff and will not affect you in anyway financially. Your future behaviour will be monitored at every contact you have with Joncentre Plus.
>
> We are committed to treating you in a fair and polite manner. In return we expect you to treat us in the same way. Therefore I trust that you will make sure this type of incident does not happen again."

8. On 8 December 2020 the Claimant wrote to the Defendant under the heading "*letter before claim- re False Allegation of a Public Order Act -section 4 (intentional threatening behaviour)*". In this letter the Claimant indicated that she intended to make a claim for defamation in the County Court and referred to the letter of 2 July 2020. The Claimant complained firstly, that the allegation made against her in the letter was made without any formal investigation or input from her as to her version of events and secondly, that the statement of fact was untrue and harmful to her reputation. She then set out her version of events:

> "On that particular afternoon, (it was during the initial COVID19 lockdown, Leamington Spa Job Centre was consequentially shut and I had no access to a mobile phone or the internet), I had indeed communicated with the aforementioned individual. I'd taken the opportunity, as I spotted her walking closely passed me along one of the main shopping aisles in the store, to inform her I would be making a formal complaint about her regarding her constant unprofessional and bullying behaviour towards me.
>
> At no point during our interaction could anything I said or have done be misconstrued as harassment or intimidation. On the contrary, I remained polite and composed through out our entire encounter. It was a perfectly reasonable and lawful exchange and certainly did not constitute a public order offence.
>
> This person has made a deliberate, formal communication with a third party (a government body which shares information with other organisations) with an intent to harm my reputation. She knew or ought to have known that her allegation of harassment against me was false but made it anyway in order to deliberately harm me. In other words, the accusations against me were made in a wilfully defamatory manner; that is with malice and intent.

> DWP have subsequently written a letter to me containing a false statement in relation to this rather serious criminal allegation, which despite holding -as they state – unofficially on record … could still be used to incriminate me at some further stage and harm my reputation further. ((Since DWP have also stated in the letter that my "*future behaviour will be monitored at eery contact"* I have with Jobcentre Plus, my reputation has evidently been harmed).
>
> With regard to my claim in defamation against yourselves, I seek the following remedies:
>
> Damages (£7,000 -including aggravated damages for humiliation, embarrassment and mental anguish suffered),
>
> An undertaking from you/the DWP employee that you/she will not male any further defamatory statements.
>
> A retraction of the false and injurious statement
>
> An apology … "

9. On 27 January 2021 the Defendant responded to the Claimant's letter denying any liability. In short the Defendant's stance was the contents of the letter of 2 July 2020 were confidential between the Claimant and the DWP and that no harm to her reputation could possibly have been caused by it. The response noted that the Claimant disputed the contents of the letter of 2 July 2020 and referred this issue to its Complaints Resolution Team.

10. On 24 April 2021 the Defendant's Complaints Resolution Team wrote to the Claimant informing her that her complaints against the DWP member of staff had not been upheld and that it was appropriate for the letter of 2 July 2020 to have been sent to her. It was however accepted that there was failure to inform the Claimant that she could contact the DWP about the findings and that she should have been told she could write to the nominated manager who had been responsible for the letter. In recognition of the failure to provide this information and the inconvenience caused to the Claimant a special payment of £50 was authorised.

11. On 1 July 2021 the Claimant delivered the claim form to the Coventry District Registry of the High Court. The claim set out on the claim form was for "Damages for libel and malicious falsehood (unproven allegation of Section 4 offence of intentional threatening behaviour) with reference to a letter dated 2 July 2020 …" The claim was formally issued on 20 July 2021.

12. On 10 August 2021 the Claimant served her particulars of claim. The publication relied on was set out in paragraph 3 as follows:

> "Within 12 months immediately proceedings the commencement of these proceedings, the Claimant received a letter dated 2 July 2020 from the Defendant (UCB TEAM Wolverhampton) containing words (concerning the claimant)

> which had formed part of an original formal communication (e-mail) to the above and which had been written by a DWP employee based at Leamington Spa Job Centre Plus. For ease of reference a copy of the publication is set out below."

There then follows the text of the letter of 2 July 2020 which is also exhibited to the particulars of claim.

13. On 26 August 2021 the solicitor for the Defendant wrote to the Claimant pointing out that the claim was fundamentally misconceived, did not disclose a viable cause of action against the DWP and did not comply with the requirements of the CPR. As one might expect the solicitor advised the claimant that she should take independent legal advice and referred her to the primary sources of procedural and case law.

14. In particular the following defects were drawn to the Claimant's attention;

    i) The claim had been issued in the wrong court. CPR 53.1(3) required the claim to be commenced in the Queen's Bench Division at the Royal Courts of Justice.

    ii) The particulars of claim failed to set out any publication to a third party contrary to PD 53 para 4.2(2)

    iii) The particulars of claim referred only to a letter dated 2 July sent to the Claimant by the DWP. In the circumstances no claim could be maintained for libel or malicious falsehood. The Claimant was referred to Duncan and Neill on Defamation 5th Ed at para 8.01. In the circumstances the claim was likely to be struck out under CPR 3.4(2) as disclosing no cause of action.

    iv) The particulars of claim do not set out any of the facts and matters relied upon to satisfy the requirements of section 1 of the Defamation Act 2013 and that this was a requirement for each publication to a third party.

    v) That the claim for malicious falsehood suffered from same fundamental flaws and that no pecuniary damage had been particularised.

15. The Claimant was invited to either withdraw her claim or to consent to the claim being transferred to the Royal Courts of Justice, to agree to extend the time for service of a Defence, provide an amended particulars of claim setting out viable causes of action, in default of which an application would be made to strike out the claim.

16. On 4 September 2021 the Claimant responded that she believed the claim would be more conveniently dealt with in the Coventry District Registry and vehemently disagreed that her claim was "*fundamentally misconceived*". At paragraph 3 of her letter she stated:

> "I deem it necessary to point out to you at this stage of proceedings that I believe that my claim does indeed disclose a viable cause of action against DWP in both libel and malicious falsehood and does comply with the mandatory requirements of the CPR and/or sets out the necessary elements of the torts asserted:

> My Claim Form and Particulars of Claim were intended to be read in conjunction with my Pre-Action letter dated 8 December 2020 where I clearly identify the communication of a false/libellous statement by means of e-mail to a third party; that is the communication of a defamatory matter by a DWP employee based at Leamington Spa Jobcentre Plus (the same individual who made the false criminal allegation in the retail store on 24 June 2020 to a third person; namely the UCB Team/Mail Handling Site based at Wolverhampton who subsequently wrote to me, the publication of which disclosed a false allegation of a Public Order offence – Section 4 (intentional threatening behaviour)/ harassment. It is not possible for me to name the person who sent the e-mail or give the precise day/time it was sent to the UCB handling site as both the the UCB Team & Leamington Job Centre refuse to disclose that information."

The claimant concluded by stating that she would prepare amended particulars of claim.

17. On 8 September 2021 the Defendant's solicitor wrote informing the Claimant of the following:

    i) That a Media and Communications claim issued in a District Registry had to be transferred to the Royal Courts of Justice and that an application would be issued seeking such a transfer.

    ii) That in view of the matters set out in her letter of 4 September 2021 the Claimant may be trying to rely upon some other communication other than the letter of 2 July 2020 advanced in the particulars of claim in which case any amended particulars of claim would have to address why any such publication was not statute barred and had been brought within one year of the claim form being received by the court at Coventry on 1 July 2021.

    iii) That her draft amended particulars of claim would need to comply with the requirements of paragraphs 4.1 and 4.2 of CPR 53B.

18. On 26 October 2021 the application to strike out was served on the Claimant together with the evidence in support.

19. At some point before 15 November 2021 the Claimant sent an undated document titled "*Claimant's response to Defendant's summary judgment/strike out application out application*". In this document the Claimant sought amongst other things to maintain that the publication she was complaining about was the communication to the UCB prior to the letter of the 2 July 2020 and that she could not refer to the precise date of the communication because the Leamington Jobcentre refused to disclose the information.

20. On 15 November 2021 the Defendant's solicitor wrote informing the Claimant of the following:

    i) That she must necessarily have known any such communication was made between 24 June and 2 July 2020.

ii) That she must have been aware that the limitation period of one year applied to claims for defamation as the claim was sent to the court on 1 July 2021 the last day possible for the publication on the 2 July 2020.

iii) That she had no provided any particulars of serious harm.

iv) That she would have to make an application to disapply the limitation period for any earlier publication she relied upon and to amend her claim to include proper particulars of serious harm.

v) That she should take independent legal advice if she was not sure how to proceed.

21. The Claimant responded in writing on 29 November 2021 maintaining her position and restating her arguments on limitation and serious harm.

22. On 4 October 2021 Master Thornett made an order on the Defendant's application transferring the claim to the Media and Communications list in the Queen's Bench Division and order the Claimant to pay the Defendant's costs of the application.

23. On 25 October 2021 this application was issued. As at the date of the hearing before me the Claimant had not made any application to disapply the limitation period or amend her particulars of claim. It is fair to note that the Claimant did produce an undated draft amended particulars of claim at some point prior to the hearing.

The parties submissions

24. On behalf of the Defendant, in support of his overall position that the claim should be struck out, Mr Scherbel-Ball made the following submissions;

i) The claim has no legally sustainable basis as the publication identified in the Claim Form and the Particulars of Claim is the Letter from the UCB dated 2 July 2020. This is a publication to the Claimant herself. There is no pleading of any publication of the Letter to a third party. The claim therefore fails the fundamental requirement of both the torts of libel and malicious falsehood that there is a publication to a third party.

ii) The Claimant cannot rely upon any earlier publication to a third party because the publication is not clearly identified and that while the Claimant had not made any application to amend her particulars of claim the draft amended particulars of claim remained opaque and focused on the letter of 2 July 2020 in breach of CPR PD53B.

iii) That even if the Claimant had properly and adequately pleaded a claim in compliance with the requirements of PD53B any such claim is statute barred.

iv) There is no application to disapply the limitation period and there is no reasonable prospect of any application succeeding in view of the history known to the Claimant and contents of the correspondence between the parties.

v) There is no proper pleading of the Claimant's case on serious harm. Her case set out at paragraphs 4 (a) and (b) of her draft amended particulars of claim provides

no proper or sufficient details of serious harm to reputation or how it is said that any harm is properly linked to the publication(s) complained of. She vaguely states that *"defamatory comments have been circulated amongst staff"* but it is clear from the paragraph this is staff at Leamington Spa Job Centre Plus, not the UCB at Wolverhampton. Similarly, the wholly unparticularised assertion that unspecified information has been *"passed on to local security networks"* does not relate to the publication to the UCB in Wolverhampton.

vi) The lack of a proper plea of serious harm is exemplified by the assertion that "malicious information about the Claimant could also be distributed by the third party given that DWP customer information regarding unproven offences can be shared with other government departments." (emphasis added). This conflates publications that have not taken place with the need to plead and prove actual or likely serious harm to reputation by the specific publication complained of as required by s.1 of the Defamation Act 2013. Self-evidently, such a pleading cannot be sustained by potential separate publications which have not taken place.

vii) The claim for malicious falsehood suffers from the same issues as the claim for libel in respect of (i) adequately identifying the publication(s) complained of and (ii) limitation. In addition, there is no (i) claim for special damage and (ii) no properly pleaded claim of malice.

viii) Further, and finally there is no adequate or proper claim of malice to sustain the tort of malicious falsehood. The pleading in this regard is wholly opaque and lacking proper specificity. It appears to be based on (i) a claim of inaccuracy, which does not equate to malice and (ii) a perceived distinction between the contents of the Letter which stated that the Claimant's conduct consisted of her *"shouting, threatening and intimidating the DWP Employee"* and the DWP's letter to C dated 24 April 2021 following her complaint where the DWP stated *"We do not accept that you acted reasonably by approaching [the DWP employee] and making certain comments that made her feel threatened and intimidated."* This purported difference does not sustain any inference as the Claimant alleges, let alone one capable of supporting a pleading of malice.

25. The Claimant prefaced her submissions by reminding me that she was not a specialist in law or legal practice but did have an interest in legal theory and wanted to start by making the following philosophical point; "*That this brings to mind Hegel's contention that crime and dispute can only have its proper formulation in the court room and that it is only properly understood as a speculative development of legality*".

26. The Claimant felt that the Defendant had deliberately and manipulatively focused their strike-out application solely on an analysis of procedural regulations and the extent to which she had adhered to them in an attempt to obscure the empirical facts surrounding the nature of her claim.

27. The Claimant began with a rhetorical question, "*Why on earth would I be bothered to take libel action regarding a publication to my self without any third party involvement*?" She then when on to reiterate the points that she had made in the correspondence set out at paragraphs 8, 16,19 and 21 above.

28. In particular the Claimant maintained:

    i) That she could not have commenced the claim for defamation based on the earlier communication, upon which she now relied, at an earlier point and within the limitation period because the information was concealed from her and not disclosed.

    ii) That the requirement under the Defamation Act 2013 to establish serious ham had not altered the previous common law in particular in the context of a statement imputing the commission of a criminal offence, in this case an offence under section 4 of the Public Order Act.

    iii) That the damage to her reputation arose because the allegation that she was presumed guilty of a criminal offence would inevitably cause serious harm to her standing in the eyes of right thinking members of society, including a substantial number of DWP staff both local and national and further that her reputation could suffer further serious harm if the data held on the DWP UCB database under her name was used as evidence in support of future action against her.

29. The Claimant made it very clear that she felt belittled and humiliated by her experience and that she should have the opportunity to cross-examine her accuser.

Legal principles

30. CPR 3.4 (2) provides that the court may strike out a statement of case if: (a) it appears to the court that the statement of case discloses no reasonable grounds for bringing or defending the claim; or (b) that there has been a failure to comply with a rule, practice direction or court order.

31. An application to strike out should not be granted unless the court is certain that the claim is bound to fail, see *Hughes v Colin Richards & Co* [2004] EWCA Civ 266.

32. Where a statement of case is found to be defective, the court should consider whether that defect might be cured by amendment and if it might be, the court should not strike out the case without first giving the party concerned an opportunity to amend, see *Soo Kim v Young* [2011] EWHC 1781 (QB).

33. CPR 24.2 provides that a court may give summary judgment against a claimant on the whole of the claim or a particular issue if: (a) it considers there is no real prospect of succeeding on the claim or issue; and (b) there is no other compelling reason why the case or issue should not be disposed of at trial.

34. The principles applicable to applications for summary judgment were set out by the Court of Appeal in *The LCD Appeals* [2018] EWCA Civ 220. The Court of Appeal approved the following considerations taken from passages in *Easyair v Opal Telecom* [2009] EWHC 339 Ch and *Swain v Hillman* [2001] All ER 91:

> "i) the court must consider whether the claimant has a "*realistic*" as opposed to a "*fanciful*" prospect of success: *Swain v Hillman [2001] 1 All ER 91* ;

ii) a " *realistic* " claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel [2003] EWCA Civ 472* § 8;

iii) in reaching its conclusion the court must not conduct a " *mini-trial* ": *Swain v Hillman;*

iv) this does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* § 10;

v) however, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550* ;

vi) although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 3* ;

vii) on the other hand, it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725* "; and

> viii) a judge in appropriate cases should make use of the powers contained in Part 24. In doing so he or she gives effect to the overriding objective as contained in Part 1. It saves expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose; and it is in the interests of justice. If the claimant has a case which is bound to fail, then it is in the claimant's interest to know as soon as possible that that is the position: *Swain v Hillman [2001] 1 All ER 91* § 94."

35. Claims for libel and malicious falsehood are subject to specific pleading requirements set out in the CPR and/or the common law. The specialist nature of a libel claim is reflected in the fact that libel claims must be brought in the Media and Communications List of the Queen's Bench Division in the High Court, see CPR 53.1 (3).

36. Practice Direction 53B contains the following provisions relating to statements of case in libel claims. Statements of case must set out:

    i) the publication which is the subject of the claim in the Claim Form – PD53B paragraph 4.1;

    ii) the precise words of the statement complained of – PD53B paragraph 4.2(1);

    iii) when, how and to whom the statement was published. If a claimant does not know to whom the statement was published, or it is impracticable to set out all such persons, then the particulars of claim must include all facts and matters relied upon to show (a) that such publication took place and (b) the extent of such publication – PD53B paragraph 4.2(2); and

    iv) the facts and matters relied upon in order to satisfy the requirement of s.1 of the Defamation Act 2013 that the publication of the statement complained of has caused or is likely to cause serious harm to the reputation of the claimant – PD53B paragraph 4.2(3).

37. Taken together the requirements of PD53B emphasise the critical importance of identifying the specific publication(s) of which complaint is made. Each publication is a separate cause of action in libel or malicious falsehood and must be pleaded with proper specificity. Publication to a third party is a fundamental ingredient of the cause of action in both torts, see *Duncan and Neill on Defamation and other media and communications claims, 5th Edition* at paragraph 8.01:

> "No action can be maintained for libel or slander unless there is a publication, that is a communication of the statement complained of to some person other than the claim. Thus there is no publication, and therefore no action can lie, if the defamatory matter is communicated only to the claimant themselves."

38. Section 1 of the Defamation Act 2013 provides that a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the Claimant. Where a claimant fails to properly particularise an adequate claim for serious

harm, this is a threshold issue and the particulars of claim are liable to be struck out, see *Johnson v McArdle* [2020] EWHC 644 (QB).

39. The essential ingredients of a claim for malicious falsehood which must be properly pleaded are: (i) publication about the plaintiff to a third party, (ii) of a false statement (iii) that was published maliciously and (iv) that has caused actual pecuniary damage to a claimant or that the claimant is exempted from doing so by the provisions of s.3 of the Defamation Act 1952, see *Niche Products Ltd v MacDermid Offshore Solutions LLC* [2014] EMLR 9 at [12].

40. As can be seen, pecuniary damage is an essential part of a claim for malicious falsehood. The pecuniary damage must be properly pleaded or if reliance is placed on s.3 of the Defamation Act 1952 on the basis that the words published are calculated (i.e. likely) to cause pecuniary damage, the claimant must identify the nature of the loss which it is alleged the falsehood is likely to have been caused and the mechanisms by which s/he contends that the loss is likely to have been sustained. Harm to reputation cannot form part of a claim for pecuniary damage – see - *Tinkler v Ferguson* [2020] EWHC 1467 (QB) at [43] – [44] per Nicklin J and *Niche Products* at [34] – [39] per Birss J (as he then was).

41. A case of malice is equivalent to a pleading of dishonesty and must therefore be pleaded with a high degree of particularity and those particulars must be more consistent with the presence of malice and its absence. In the case of *Henderson v London Borough of Hackney* [2010] EWHC 1651 (QB) at [33] – [36], Mr Justice Eady set out the following guidance on the requirements of a plea of malice:

> "It has been confirmed by the Court of Appeal in Telnikoff v Matusevitch [1991] 1 QB 102 and in Alexander v Arts Council of Wales [2001] 1 WLR 1840 that, in order for a claimant to succeed in proving malice, it is necessary both to plead and prove facts which are more consistent with the presence of malice than with its absence. This is one of the reasons why, in practice, findings of malice are extremely rare.
>
> It is thus reasonably clear, as a matter of pleading practice, that allegations of malice must go beyond that which is equivocal or merely neutral. There must be something from which a jury, ultimately, could rationally infer malice; in the sense that the relevant person was either dishonest in making the defamatory communication or had a dominant motive to injure the claimant. Mere assertion will not do. A claimant may not proceed simply in the hope that something will turn up if the defendant chooses to go into the witness box, or that he will make an admission in cross examination: see Duncan and Neill on Defamation at para 18.21.
>
> It is not appropriate merely to plead (say) absence of honest belief, recklessness or a dominant motive on the defendant's part to injure the claimant. Unsupported by relevant factual averments, those are merely formulaic assertions. It is certainly not right that a judge should presume such assertions to be

> provable at trial. Otherwise, every plea of malice, however vague or optimistic, would survive to trial. It would be plainly inappropriate to move towards such an unbalanced regime, since it would tend to undermine the rights of defendants protected under Article 10 of the European Convention on Human Rights.
>
> It is necessary also to remember, in a case where malice is alleged against a corporate entity, that in order to fix it with the necessary state of mind, the individual person or persons acting on its behalf, and who are said to have been malicious as individuals, must be clearly identified."

42. Section 4A of the Limitation Act 1980 provides that claims for libel and malicious falsehood have a short limitation period of 1 year. The purpose of a libel claim is vindication of reputation and therefore an individual who wishes to bring such a claim will be expected to pursue the action with appropriate vigour. There is a discretion under s.32A of the Limitation Act 1980 to disapply the limitation period. This discretion has been described as "broad but exceptional", its exercise requires clear and compelling evidence to discharge the onus on the claimant. In *Bewry v Reed Elsevier UK Ltd (t/a Lexis Nexis)* [2015] 1 WLR 2565,**.** Sharp LJ stated at [36] that:

> "ignorance of the limitation period will rarely if ever, be a factor which carries any or significant weight given the policy reasons underlying the one year limitation period for libel claims. A claimant is expected to pursue his complaint promptly irrespective of the limitation period and whether he knows about it, for the simple reason that not to do so is inconsistent with a genuine wish to pursue vindication promptly and vigorously which is what the law requires. Ignorance could only be relevant in the most marginal type of case, where a claimant is actively misled for example…"

Decision

43. Given the Claimant's concession that she is relying on the publication which took place on 25 June 2020 of the Jobcentre employee's account of the events of 24 June 2020 to the UCB Team and not the publication of the letter dated 2 July 2020, the claim was clearly issued outside of the 1 year limitation period for defamation claims provided by section 4A of the Limitation Act 1990.

44. PD7A para 5.1 provides that a claim is brought for limitation purposes on the day it is received by the court. The claim form although issued on 20 July 2021 is clearly stamped as received by the court on 1 July 2021.

45. I would however readily accept Mr Scherbel-Ball's submission that the existing claim form and particulars of claim only set out a claim for libel in relation to the letter of 2 July 2020. I reject the Claimant's assertion that I can read her letter of claim along side the pleadings. No attempt has been made to plead the contents and meaning of the 25 June 2020 publication. The requirements of PD 53B are clear and unambiguous and are readily accessible to any potential claimant. The purpose of pleadings is succinctly set out in PD53B para 2.1 as providing the information necessary to inform the other party

of the nature of the case they have to meet. This paragraph of PD53B also cross refers to CPR Part 16 and the accompanying practice direction which apply to statements of case generally. For this reason alone the claim should be struck out. Even if it were possible to construe a valid claim in respect of the 25 June 2020 publication that claims in libel and malicious falsehood would still be statute barred.

46. In the circumstances if the Claimant wishes to pursue claims in respect of the 25 June 2020 publication she would need to make an application to amend her claim form and particulars of claim and make a successful application under section 32A of the Limitation Act 1980 to disapply the limitation period.

47. In circumstances where the Claimant has not made either of the above applications it is necessary for the Claimant to show that she has a real prospect of success on both of the potential applications in order to defeat the Defendant's application for summary judgment.

48. I turn firstly to the question of limitation. The first point to be made is, as is apparent from observation (ii) at paragraph 20 above, the Claimant must have known that the limitation period for a defamation or malicious falsehood claim is one year from the date of the publication. The Claimant's explanation for not bringing the claim within the limitation period does not withstand any form of logical scrutiny. She must always have known that the publication she now wishes to rely upon must have taken place between the incident which occurred on 24 June 2020 and when she received the letter of 2 July 2020. Her submission that she could not plead the detail of the publication because it was concealed from her also does not withstand logical scrutiny.

49. PD 53B para 4.2 (2) specifically provides for such a situation:

> "… If the Claimant does not know to whom the statement was published or it is impactable to set out all such persons, then the particulars of claim must include all facst and matters relied upon to show (a) that such publication took place, and (b) the extent of such publication."

50. Given the Claimant's own knowledge of the events of the 24 June 2020 and the report of them in the letter of 2 July 2020 it would have been perfectly possible for her to plead a case in relation to the 25 June publication at any time from her receipt of the letter.

51. As can be seen from paragraph 20 above the Claimant was specifically advised by the Defendant's solicitor that an application to disapply the limitation period on 15 November 2021. There is still no such application before the court. In the circumstances I agree with Mr Scherbel-Ball that the comments Stanley Burnton LJ in *Cecil v Byat* [201]] 1 WLR 3086 at [54] are apposite:

> "in the law of limitation, a miss is as good as mile"

52. In the circumstances I conclude the Claimant has failed to produce the clear and compelling evidence required and has no reasonable prospect of persuading a court in accordance with section 32A of the Limitation Act 1980 that it would be equitable to allow the action to proceed.

53. If it were possible to overcome the limitation hurdle it remains the case that the draft amended particulars of claim, on which the Claimant seeks to rely, still do not comply with the necessary requirements for claims in libel and malicious falsehood.

54. The Claimant's case on serious harm is set out at paragraphs 4(a) and (b) of the amended Particulars of Claim.

> "a) the statement has lowered the Claimant in the estimation of right thinking members of society to the extent that relations between the Claimant and the staff at Leamington Spa Jobcentre Plus have markedly changed. Defamatory comments have been circulated amongst staff by the aggressor such that the Claimant is now perceived as a threat to the public & spoken to accordinglt in a contemptuous manner by both staff & security.
>
> Information regarding the unproven criminal allegation of a (s.4) Public Order offence against the Claimant of which the DWP have refused to retract has also been passed on to local security networks. Security guards linked with the company providing security services for the Leamington office work in close partnership with Town Centre CCTV operators, community (including supermarkets), businesses, Neighbourhood Wardens and local police. Security Guards and town centre control room operator who operate their own radio system are in constant two way contact with the police, the collective purpose of which is to deal with crime, and the tracking and monitoring of suspects regarding threatening and anti-social behaviour. The Claimant who has now been included in the above category is suspiciously related to as a potential criminal and has been increasingly monitored.
>
> b) Malicious information about the Claimant could also be distributed by the third party given that DWP customer information regarding alleged unproven offences can be shared with other government departments to the detriment of the customer. It is the assumption of the Claimant that the written words complained of, in light of the above have serious implications in terms of reputational damage/potential indictment."

55. These paragraphs provide no proper or sufficient details of serious harm to reputation or how it is said that any harm is properly linked to the publication(s) complained of. The Claimant vaguely states that *"defamatory comments have been circulated amongst staff"* but it is clear from the paragraph this is a reference to staff at Leamington Spa Job Centre Plus, not the UCB at Wolverhampton. Similarly, the wholly unparticularised assertion that unspecified information has been *"passed on to local security networks"* does not relate to the publication to the UCB in Wolverhampton.

56. Another example of the lack of a proper plea of serious harm is provided by the Claimant's assertion that "*malicious information about the Claimant <u>could also be distributed</u> by the third party given that DWP customer information regarding*

unproven offences can be shared with other government departments." (emphasis added). I accept Mr Scherbel-Ball's submission that this conflates publications that have not taken place with the need to plead and prove actual or likely serious harm to reputation by the specific publication complained of as required by s.1 of the Defamation Act 2013. Self-evidently, such a pleading cannot be sustained by potential separate publications which have not taken place.

57. The Claimant frankly accepted in the course of her submissions that she probably couldn't sustain a pleading of special damage for the purpose of her claim for malicious falsehood.

58. Turning to the issue of malice which it is necessary to plead in order to sustain the tort of malicious falsehood. The pleading is wholly unsatisfactory and lacking in proper particulars. It appears to be based on (i) a claim of inaccuracy, which does not equate to malice and (ii) a perceived distinction between the contents of the Letter which stated that Claimant's conduct consisted of her *"shouting, threatening and intimidating the DWP Employee"* and the DWP's letter to C dated 24 April 2021 following her complaint where the DWP stated *"We do not accept that you acted reasonably by approaching [the DWP employee] and making certain comments that made her feel threatened and intimidated."* This purported difference does not sustain any inference as the Claimant seeks to make, let alone one capable of supporting a pleading of malice. This is yet another reason why the claim in malicious falsehood should be struck out.

59. Finally, I have concluded that I should not permit the Claimant any further chance to amend her claims. It is apparent from paragraphs 6 to 23 above that the Defendant's solicitor has taken every opportunity to draw the shortcomings with the pleading to the Claimant's attention. They have very properly referred her to the relevant rules practice directions and cases so that she can address them. Notwithstanding this Claimant expressed the view that the Defendant's focus on the procedural issues was designed to obscure the merits and prevent her claim from progressing to a hearing. Any such view is wholly misguided for the reasons given by Lord Sumption in *Barton v Wright Hassall LLP*. The Claimant cannot expect to offload her issues into the court system without regard to the requirements of the law or the rules of procedure in the hope that court will sort it all out and allow her her day in court. This is not fair to other litigants and it is not fair to the court. She has made no attempt to comply with the rules or make the necessary applications and I can have no confidence that this will change if the opportunity were afforded to her.

60. For all of the above reasons the claim will be struck out.